



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-W-T-, INC.

DATE: DEC. 6, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a tour and travel business, seeks to employ the Beneficiary as a financial manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition. The Director found that the labor certification requirements did not support the requested classification of advanced degree professional and that the Beneficiary does not have the requisite educational degree to qualify for the job offered under the terms of the labor certification and to qualify for classification as an advanced degree professional.

On appeal, the Petitioner asserts that the Director’s decision was erroneous, that the labor certification requirements do support the requested classification of advanced degree professional, and that the Beneficiary has the requisite educational degree to meet the terms of the labor certification and qualify for advanced degree professional classification.

Upon *de novo* review, we will withdraw the Director’s finding that the labor certification does not support the requested classification, but affirm the Director’s findings that the Beneficiary does not have the requisite educational degree to qualify for classification as an advanced degree professional and to meet the terms of the labor certification. Accordingly, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S.

Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

A. Requirement for Classification as an Advanced Degree Professional

The term “advanced degree” is defined in the regulation at 8 C.F.R. § 204.5(k)(2) as follows:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.

The regulations at 8 C.F.R. § 204.5(k)(3)(i) state that a petition for an advanced degree professional must be accompanied by either:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

Section J of the labor certification states that the Beneficiary’s highest level of education relevant to the job offered is a bachelor of commerce degree from the [REDACTED] in India, completed in 2001. As evidence of this credential the Petitioner has submitted copies of a degree certificate and statements of marks showing that the Beneficiary was awarded a bachelor of commerce from the [REDACTED] on February 24, 2001, after completion of a three-year academic program. The Petitioner also submitted documentary evidence that the Beneficiary passed a series of examinations by [REDACTED] and was admitted as an associate member of [REDACTED] on May 31, 2004. In addition, the Petitioner submitted two evaluation reports from the Foundation for International Services, Inc. (FIS) asserting that the Beneficiary’s three-year bachelor of commerce from the [REDACTED] was equivalent to three years of university-level credit from an accredited U.S. college or university, and that the Beneficiary’s [REDACTED] membership certificate, following his three-year bachelor’s degree, was equivalent to a bachelor’s degree in accounting from an accredited U.S. college or university.

In denying the petition, the Director found that the Beneficiary’s certificate of membership in the ICAI is analogous to a professional license that required a combination of education and practical experience rather than a diploma earned at a college or university. The ICAI is a statutory body for the regulation of the accounting profession, the Director stated, not a degree-granting academic

institution. Therefore, the [REDACTED] membership certificate was neither a U.S. baccalaureate degree nor a foreign equivalent degree, as required by the regulation to qualify the Beneficiary for advanced degree professional classification.

On appeal, the Petitioner refers to the educational evaluations from FIS which evaluated the Beneficiary's three-year bachelor of commerce from the [REDACTED] followed by his certificate of membership in the [REDACTED] as equivalent to a bachelor's degree in accounting from an accredited college or university in the United States. It is important to note, however, that neither evaluation asserts or establishes that the [REDACTED] membership certificate is a degree, as required for the requested classification.

The Petitioner states that the FIS evaluation is based on information provided in the Electronic Database for Global Education (EDGE),¹ created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).² EDGE states that a three-year bachelor of commerce degree in India is comparable to three years of university study in the United States. EDGE also states that associate membership in [REDACTED] is a credential awarded after two years of study beyond the [REDACTED] intermediate examination and passage of the [REDACTED] final examination, and that [REDACTED] membership represents "a level of education comparable to a bachelor's degree in the United States." edge.aacrao.org/country/credential/institute-of-chartered-accountants-of-india-icai-final-exam-and-award-of-association-membership?cid=single. Educational comparability to a U.S. bachelor's degree, however, does not make the [REDACTED] membership certificate a "foreign equivalent degree" to a U.S. baccalaureate degree, as required by 8 C.F.R. § 204.5(k)(3)(i)(B) to qualify the Beneficiary for advanced degree professional classification.

The Petitioner claims, based on some quoted language from an EDGE/AACRAO report for India, that the [REDACTED] does confer degrees. However, that assertion is not supported by the record. The quoted language confirms that the [REDACTED] regulates the profession of chartered accountants, conducts courses, coordinates practical training, holds examinations, and awards associate membership to successful candidates. An associate membership certificate from the [REDACTED] however, is not a degree. The Beneficiary's "Certificate of Membership" from the [REDACTED] does not claim to be a degree. The [REDACTED] is not a college, university, or any other kind of degree-granting academic institution. While passage of the [REDACTED] final examination and associate membership in the [REDACTED] may be comparable to a U.S. baccalaureate or foreign equivalent degree for some purposes, these credentials do not constitute a foreign equivalent degree to a U.S. baccalaureate degree as required under section 203(b)(2) of the Act and applicable regulations to qualify the Beneficiary for classification as an advanced degree professional.

¹ EDGE is described on its registration page as "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php> (last visited Nov. 8, 2018).

² AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries." <http://www.aacrao.org/who-we-are> (last visited Nov. 8, 2018).

Evaluations of academic credentials by evaluation services are utilized by USCIS as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). For the reasons discussed above, the record does not establish that either of the Beneficiary's credentials from the [REDACTED] or the [REDACTED] constitute a foreign equivalent degree of a U.S. bachelor's degree.

B. Minimum Educational Requirement of the Labor Certification

A beneficiary must meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition's priority date.³ *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). In this case the minimum educational requirement of the labor certification is a bachelor's degree in accounting, commerce, or a related field.

The Director found that the Beneficiary did not meet the minimum educational requirement of the labor certification because he did not have a U.S. baccalaureate degree or a foreign equivalent degree in accounting, commerce, or a related field. On appeal the Petitioner asserts that the Beneficiary's [REDACTED] membership certificate constitutes such a degree. However, as previously discussed, the [REDACTED] is not a degree-granting institution and its membership certificate is not a foreign equivalent degree⁴ to a U.S. baccalaureate degree in accounting. Therefore, the Beneficiary does not meet the minimum educational requirement of the labor certification.

III. CONCLUSION

We will dismiss the appeal because the Petitioner has not established that the Beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree, as required to qualify for classification as an advanced degree professional and to meet the minimum educational requirement of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of S-W-T-, Inc.*, ID# 2091080 (AAO Dec. 6, 2018)

³ The priority date of the petition is the date the underlying labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d). In this case the priority date is February 23, 2016.

⁴ The labor certification requires at a minimum a U.S. bachelor's degree or a foreign educational equivalent, which in this case is a foreign equivalent *degree*. If we were to interpret the labor certification to allow for less than a foreign equivalent degree, the labor certification would not support the requested classification of advanced degree professional. *See* 8 C.F.R. § 204.5(k)(4)(i).